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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 CHRISTOPHER G. MILLER,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting  
14 Commissioner of the Social Security  
Administration,

15 Defendant.  
16

CASE NO. 13-cv-05698 JRC

ORDER ON PLAINTIFF'S  
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and  
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.  
19 Magistrate Judge and Consent Form, ECF No. 5; Consent to Proceed Before a United  
20 States Magistrate Judge, ECF No. 6). This matter has been fully briefed (*see* ECF Nos.  
21 12, 13, 14).

22 After considering and reviewing the record, the Court finds that the ALJ  
23 appropriately evaluated the medical evidence in order to resolve conflicts in the medical  
24

1 evidence and issues of credibility. The ALJ failed to credit fully plaintiff's allegations  
2 and found, instead, that plaintiff lacked motivation. Although it is not the only possible  
3 interpretation of the evidence, the ALJ's interpretation of the evidence is a valid  
4 interpretation, supported by substantial evidence in the record as a whole.

5 Therefore, this matter is **AFFIRMED**.

#### 6 BACKGROUND

7 Plaintiff, CHRISTOPHER G. MILLER, was born in 1990 and was 19 years old on  
8 the alleged date of disability onset of November 30, 2009 (*see* Tr. 161-64). Plaintiff  
9 dropped out of school in the tenth grade (Tr. 49) and has never worked (Tr. 53).

10 According to the ALJ, plaintiff has at least the severe impairments of "major  
11 depressive disorder and schizoid personality disorder (20 CFR 416.920(c))" (Tr. 21).

12 At the time of the hearing, plaintiff was living at home with his mother (Tr. 62).

#### 13 PROCEDURAL HISTORY

14 Following plaintiff's application for disability insurance ("DIB") benefits pursuant  
15 to 42 U.S.C. § 423 (Title II) of the Social Security Act (*see* Tr. 161-64, *see also* Tr. 102-  
16 09, 113-118), his requested hearing was held before Administrative Law Judge David  
17 Johnson ("the ALJ") on October 20, 2011 (*see* Tr. 39-98). On November 10, 2011, the  
18 ALJ issued a written decision, in which he concluded that plaintiff was not disabled  
19 pursuant to the Social Security Act (*see* Tr. 16-38).

20 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Whether or  
21 not the ALJ improperly rejected the opinions of every examining physician of record; (2)  
22 Whether or not the ALJ erred in finding plaintiff's condition non-severe; (3) Whether or  
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1 not the ALJ failed to provide “clear and convincing” reasons for rejecting plaintiff’s  
 2 testimony; (4) Whether or not the ALJ failed to provide “germane” reasons for rejecting  
 3 lay testimony; and (5) Whether or not the ALJ failed to meet his burden of showing that  
 4 plaintiff was disabled at step five of the sequential disability evaluation process (*see* ECF  
 5 No. 12, p. 1).

#### 6 STANDARD OF REVIEW

7 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
 8 denial of social security benefits if the ALJ's findings are based on legal error or not  
 9 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
 10 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
 11 1999)).  
 12

#### 13 DISCUSSION

##### 14 **(1) Whether or not the ALJ improperly rejected the opinions of every** 15 **examining physician of record.**

16 Plaintiff complains because the ALJ rejected the opinions of four examining  
 17 psychological doctors in favor of opinions from non-examining medical consultants.

18 The ALJ must provide “clear and convincing” reasons for rejecting the  
 19 uncontradicted opinion of either a treating or examining physician or psychologist.  
 20 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (*citing Embrey v. Bowen*, 849 F.2d  
 21 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). Even if a  
 22 treating or examining physician’s opinion is contradicted, that opinion can be rejected  
 23 only “for specific and legitimate reasons that are supported by substantial evidence in the  
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1 record.” *Lester, supra*, 81 F.3d at 830-31 (*citing Andrews v. Shalala*, 53 F.3d 1035, 1043  
2 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can  
3 accomplish this by “setting out a detailed and thorough summary of the facts and  
4 conflicting clinical evidence, stating his interpretation thereof, and making findings.”  
5 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (*citing Magallanes v. Bowen*, 881  
6 F.2d 747, 751 (9th Cir. 1989)).

7  
8 A. Dr. Christmas Covell, Ph.D., examining psychologist

9 The ALJ gave some weight to certain aspects of the opinion of Dr. Covell (*see* Tr.  
10 30). However, the ALJ did not give weight to Dr. Covell’s opinion that plaintiff “would  
11 have marked to severe limitations in his ability to persist over time and marked  
12 limitations in social functioning” (*see id.*). The ALJ reasoned as follows:

13 This is not consistent with her findings on the mental status exam that  
14 the claimant was only ‘mildly distractible,’ completed serial sevens and  
15 spelled a simple word forward and backward. Nor is it consistent with  
16 her observations that the claimant had normal yet underproductive  
17 speech, that he had only ‘some difficulty’ expressing thoughts and  
18 feelings, that his thought processes were logical and oriented, with no  
19 bizarre or delusional content, that he occasionally laughed and smiled at  
20 appropriate times and that he had no significant difficulties in nonverbal  
21 communication and social reciprocity (internal citation to Exhibit 7F/5-  
22 6).

23 (Tr. 30 (*citing* Tr. 358-59)).

24 The factual evidence listed by the ALJ is supported by substantial evidence in the  
record, as these MSE results and observations are in plaintiff’s medical record from his  
evaluation with Dr. Covell (*see* Tr. 358-59). In addition, the ALJ’s finding that some of  
Dr. Covell’s opinions are not consistent with Dr. Covell’s findings or observations on

1 mental status examination is a finding supported by substantial evidence in the record  
2 (*see id.*). Therefore, the ALJ's rejection of these opinions from Dr. Covell is not legal  
3 error.

4 B. Dr. Dana Harmon, Ph.D., examining psychologist

5 The ALJ failed to credit fully the opinions of Dr. Harmon in part on the finding  
6 that Dr. Harmon's opinion regarding social functioning was based on plaintiff's  
7 subjective report (*see* Tr. 31). Although plaintiff contends that no evidence supports the  
8 ALJ's finding, the ALJ provided an example, "such as the claimant's report of lack of  
9 pleasure and enjoyment, little interest in other people or things, and sleeping most of the  
10 day" (*see id.*). Substantial evidence supports the ALJ's finding, because in the section  
11 regarding plaintiff's degree of limitation in social factors, Dr. Harmon including the  
12 following notation:  
13

14 [Plaintiff] presented as withdrawn and somewhat depressed. When asked  
15 about his normal mood, he replied: "I don't really feel much of anything  
16 . . . . Sort of gray or dull." [Plaintiff] had a Beck Depression Inventory  
17 score of 27, which is associated with "moderate/severe" levels of  
18 depression and emotional distress. He reported having the most difficulty  
19 with a lack of pleasure and enjoyment, little interest in other people or  
20 things, sleeping most of the day, poor concentration, and fatigue.

21 (Tr. 367). The Court notes that the Beck Depression Inventory (BDI-II) is a  
22 psychological test in which in the client or patient answers a series of subjective  
23 questions (*see* Tr. 373-74). The Court also notes that a review of Dr. Harmon's opinion  
24 indicates explicit reliance on plaintiff's subjective reports (*see* Tr. 367).

Based on a review of the record as a whole and for the stated reasons, the Court  
concludes that the ALJ's finding that Dr. Harmon's opinion regarding plaintiff's social

1 functioning was based largely on plaintiff's subjective reports is a finding based on  
2 substantial evidence in the record as a whole. The Court also concludes that the ALJ  
3 provided specific and legitimate rationale for failing to credit fully the opinions of Dr.  
4 Harmon. When discussing Dr. Harmon's opinion, the ALJ found insufficient evidence  
5 that plaintiff's alleged symptoms are attributable to a clinical cause and noted that  
6 evidence exists demonstrating otherwise (*see id.*).  
7

8         It is clear that the ALJ has resolved conflicting evidence between two  
9 interpretations of the record, both with some support in the record as a whole: (1) that  
10 plaintiff's mental health impairments caused the symptoms alleged, verses (2) that  
11 plaintiff's lack of motivation not resulting from mental impairment is the precipitating  
12 cause of any extraordinary amount of sleep, any lack of interest in other people or things,  
13 or other alleged disabling symptoms. As noted elsewhere in the ALJ's written decision:  
14 "As evident from the claimant's statements and testimony, as well as that of his mother,  
15 the claimant is able to concentrate, focus, and persist when interested in the activity he is  
16 doing, such as video games or television" (*see* Tr. 29). Although plaintiff's mother  
17 indicated that plaintiff's focus on gaming "comes and goes," she also testified that "he'll  
18 get into a game and he'll sit in front of it for two or three hours" (Tr. 68). In this context,  
19 the ALJ also noted that "claimant's mother testified that the claimant refused to attend  
20 family events and pretended he was sick" (*see* Tr. 29), another finding supported by  
21 substantial evidence in the record (*see* Tr. 71 ("He doesn't even go to family events, he'll  
22 pretend he's sick")).  
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1 Finally, the ALJ noted evidence from Dr. Harmon's performance of a mental  
2 status examination demonstrating plaintiff's cooperative behavior and fair concentration,  
3 judgment and insight. For the stated reasons, the Court finds no error in the ALJ's  
4 assessment of the opinion of Dr. Harmon.

5 C. Dr. Sara Minor, Ph.D., examining psychologist

6 In part, the ALJ failed to credit fully the opinions of Dr. Minor on the basis that  
7 they are conclusory and not specific functional assessments; and are inconsistent with the  
8 claimant's capabilities demonstrated elsewhere in the record (*see* Tr. 31-32). These  
9 findings are supported by the record and substantiate specific and legitimate reasons for  
10 failing to credit fully Dr. Minor's opinions. The ALJ included the following discussion in  
11 his written decision:  
12

13 Ms. Correa referred the claimant to Sara Minor, PhD, for psychological  
14 testing. However, because the claimant failed to keep many testing and  
15 feedback appointments, Dr. Minor was unable to report the test results  
until a year later in June 2010 (internal citation to Exhibit 12 F/1).

16 In June 2010, when Dr. Minor was able to complete psychological  
17 testing of the claimant, she noted that the claimant's verbal and  
18 nonverbal intellectual abilities were firmly in the average range and his  
19 scores in working memory were in the high average range (internal  
20 citation to Exhibit 12 F/2; *see also* Exhibit 2F/3). She also stated that he  
21 presents some challenges to diagnoses. She opined that he may have an  
22 underlying thought disorder and that he is at high risk for developing full  
– blown psychotic episode in the future. She recommended that the  
23 claimant accept referral to psychiatry and discussed the possibility of  
24 antipsychotic medications (internal citation to Exhibit 4F/10 and Exhibit  
12 F/1). Dr. Minor opined that at his current level of functioning, the  
claimant would not be successful in school or job. She opined that his  
condition would be chronic and need to be managed with medication to  
give him his highest level of functioning (internal citation to Exhibit 12  
F/3). When the claimant was asked by Dr. Minor what might motivate  
him to go to school, the claimant responded "if his mother threatened to

1 make him move.” However, he felt strongly that his mother would  
2 always let him live with her, even if he was not doing anything (internal  
3 citation to Exhibit 12 F/1). She reported that the claimant has no interest  
4 in working or earning money and is fairly content having his mother  
support him (internal citation to Exhibit 12 F/2). He also told her that he  
plays video games, sports, and hide and seek at night with other peers  
(internal citation to Exhibit 12 F/2).

5 . . . .  
6 As stated above, on June 10, 2010, Dr. Minor opined that at claimant’s  
7 current level of functioning, the claimant would not be successful in  
8 school or a job. She opined that his condition be chronic, and would  
9 need to be managed with medication to given’s highest level of  
10 functioning. . . . These opinions are given little weight. They are not  
particularly helpful because they are conclusory, do not provide a  
functional assessment of the claimant’s capabilities, appear be based to a  
great extent on the claimant’s unreliable subjective claims, or  
inconsistent with the claimant’s capabilities demonstrated elsewhere in  
the record . . .

11 (Tr. 26-27, 31-32).

12 The Court notes that Dr. Minor’s opinions regarding plaintiff’s ability to be  
13 successful at work or at school, may have a psychotic break in the future, and that  
14 medication is required for optimum functionality are conclusory and nonspecific  
15 regarding plaintiff’s particular functional limitations (*see* Tr. 31, 400). Therefore the  
16 ALJ’s finding on this point is supported by substantial evidence in the record.  
17

18 Based on the relevant record, the Court concludes that the ALJ provided specific  
19 and legitimate reasons for failing to credit fully the opinion of examining doctor, Dr.  
20 Minor.

21 D. Dr. Janis L. Lewis, Ph.D., examining psychologist

22 The ALJ discussed the May 29, 2009, evaluation from Dr. Lewis, noting that Dr.  
23 Lewis evaluated plaintiff for DSHS benefits and that she opined that plaintiff “does not  
24



1 have empathy, [and] that he is emotionally detached and indifferent to praise and  
2 criticism” (*see* Tr. 26; *see also* Tr. 251). The ALJ gave little weight to some of Dr.  
3 Lewis’s opinions, such as that plaintiff would have marked limitations in the ability to  
4 exercise judgment and make decisions, as well as in areas of social functioning (*see* Tr.  
5 31). In part, the ALJ failed to credit fully Lewis’s opinions because the ALJ found that  
6 Dr. Lewis’s opinion relies heavily on plaintiff’s subjective report (*see id.*).

7         The ALJ’s finding that Dr. Lewis’s opinion relies heavily on plaintiff’s subjective  
8 report is based on substantial evidence in the record as a whole. For example, when  
9 rendering her opinion regarded marked limitations with respect to social functioning, Dr.  
10 Lewis noted that plaintiff reported not having any close friends “ever;” that he does not  
11 do any social networking; that he has angry fantasies; that he especially hates being  
12 interrupted; that he never has lived independently; and Dr. Lewis included a note in her  
13 report in quotation marks: “I don’t care” (*see* Tr. 251). When evaluating plaintiff’s  
14 cognitive factors such as his ability to exercise judgment and make decisions, Dr. Lewis  
15 indicated plaintiff’s report that “I remember places more than people,” although Dr.  
16 Lewis also noted multiple objective results from plaintiff’s mental status examination  
17 (*see id.*).

18         The ALJ also noted that “in contrast to what [plaintiff] told Dr. Lewis, less than  
19 one month later he denied ‘violent fantasies’ and reported that he had been socializing”  
20 (Tr. 31 (internal citation to 4F/8)). The Court already has noted plaintiff’s report to Dr.  
21 Lewis that he has angry fantasies (*see* Tr. 251), and notes that to Ms. Diane Correa, MA,  
22 LMHC, plaintiff reported no violent fantasies “ever” (*see* Tr. 336). Thus, the ALJ has  
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1 provided an additional reason supporting his determination not to credit fully the opinions  
2 of Dr. Lewis. The Court finds no error.

3 Plaintiff complains that the ALJ erred by relying on the opinions from the  
4 nonexamining medical consultants, however plaintiff's contention that the medical  
5 consultants opinions were internally inconsistent is not persuasive (*see* Opening brief,  
6 ECF No. 12, pp. 14-16). Simply because Dr. Peterson noted other opinions from the  
7 record in her own report, does not indicate that those opinions were the opinions of Dr.  
8 Peterson, as argued by plaintiff. In addition, the fact that the opinions are contradicted by  
9 the opinions from examining doctors does not render the ALJ's reliance on them  
10 erroneous: the ALJ provided specific and legitimate reasons for resolving the conflicting  
11 medical evidence. In addition, contrary to plaintiff's argument, the opinions of the  
12 nonexamining, medical consultants are consistent with other independent evidence of  
13 record, such as lack of medication; plaintiff's testimony regarding his interactions with  
14 others, including playing sports, video games and "hide and seek"; and his mental status  
15 examination results, including his high average working memory, appropriate smiling,  
16 and no significant difficulties in nonverbal communication and social reciprocity, as  
17 noted by the ALJ (*see, e.g.*, Tr. 50, 358-59, 399).  
18

19 Based on the relevant record and for the reasons stated above, the Court concludes  
20 that the ALJ did not commit harmful error during the evaluation of the medical evidence.  
21

22 (2) **Whether or not the ALJ erred in finding the plaintiff's condition non-**  
23 **severe.**  
24

1 Plaintiff complains that the ALJ improperly concluded that plaintiff's back pain  
2 was not a severe impairment, noting that some providers indicated that plaintiff's low  
3 back pain resulted from his depression or mental health issues and that he was prescribed  
4 an antidepressant with the aim of relieving his back pain (*see* Opening Brief, ECF No. 12,  
5 pp. 16-18 (*citing* Tr. 316)).

6 Here, the ALJ included the following discussion regarding plaintiff's alleged back  
7 pain:

8 The claimant also complained of back pain. However this is a non-severe  
9 impairment. On January 27, 2010, when the claimant saw Kathleen A.  
10 Leppig, M.D., for complaints of back pain. He reported no physical  
11 limitations and diagnostic testing was normal (internal citation to exhibit  
12 5F/1-4). When he saw Natalya Z. Warner, M. D., at group health on June  
13 9, 2010, she stated that when he was examined in October of 2009, x-  
14 rays of the sacroiliac joints and lumbar spine were unremarkable, that  
15 there was no evidence of seronegative spondyloarthropathy, and that the  
16 claimant's back pain was not inflammatory in nature (internal citation to  
17 Exhibit 13 F/15). On June 9, 2010, the claimant had negative clinical  
18 findings in the SI joints, normal x-rays and normal inflammatory  
19 markers. Dr. Warner diagnosed the claimant with 'questionable  
20 undifferentiated seronegative spondyloarthropathy with possible  
21 component of somatization' (internal citation to Exhibit 13 F/16). On  
22 March 29, 2011, an MRI of the pelvis was normal, the claimant had no  
23 sacroiliitis and he had normal hip joints (internal citation to Exhibit  
24 21F/20). An MRI of the lumbar spine revealed mild degenerative disc  
disease at L3 – L4, no central canal narrowing, no foraminal narrowing  
and no compression fracture (internal citation to Exhibit 21F/21).  
Further, on April 19, 2011, Zhiqian Wang, M.D., would not consider any  
aggressive treatment for the claimant's back pain (internal citation to  
Exhibit 21F/4). The claimant testified that he does not take any  
medications for his back pain. As there is insufficient evidence that the  
claimant's back pain causes more than minimal limitations in his ability  
to engage in work-related activities, it is considered nonsevere.

(Tr. 21-22).

1 The Court concludes that the ALJ's discussion regarding plaintiff's alleged back  
2 pain is supported by substantial evidence in the record, as all of the ALJ's noted findings  
3 are in plaintiff's treatment record. Although plaintiff suggests a different interpretation of  
4 the evidence, the ALJ's interpretation of the evidence is supported by substantial evidence  
5 in the record as a whole. Although plaintiff notes a couple of findings in the record not  
6 noted by the ALJ, such as a finding of paraspinal atrophy, the ALJ's failure to note this  
7 specific evidence does not render his finding regarding plaintiff's back pain erroneous,  
8 and, is at most harmless error.

9  
10 The Ninth Circuit has "recognized that harmless error principles apply in the  
11 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
12 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th  
13 Cir. 2006) (collecting cases)). The Ninth Circuit noted that "in each case we look at the  
14 record as a whole to determine [if] the error alters the outcome of the case." *Id.* The court  
15 also noted that the Ninth Circuit has "adhered to the general principle that an ALJ's error  
16 is harmless where it is 'inconsequential to the ultimate nondisability determination.'" *Id.*  
17 (quoting *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008))  
18 (other citations omitted). The court noted the necessity to follow the rule that courts must  
19 review cases "'without regard to errors' that do not affect the parties' 'substantial  
20 rights.'" *Id.* at 1118 (quoting *Shinsheki v. Sanders*, 556 U.S. 396, 407 (2009) (quoting 28  
21 U.S.C. § 2111) (codification of the harmless error rule)).  
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1 Based on a review of the record as a whole, the Court concludes that the ALJ did  
2 not commit harmful legal error at step two of the sequential disability evaluation process  
3 by failing to find that plaintiff's alleged back pain was a severe impairment.

4 (3) **Whether or not the ALJ failed to provide "clear and convincing"**  
5 **reasons for rejecting the plaintiff's testimony.**

6 Plaintiff complains that the ALJ failed to provide legally sufficient reasons for  
7 failing to credit fully plaintiff's credibility and testimony however the ALJ provided  
8 numerous valid reasons supporting his failure to credit fully plaintiff's allegations,  
9 including inconsistency with the objective medical evidence, as well as inconsistencies in  
10 plaintiff's testimony between his demeanor on direct examination versus on cross  
11 examination.

12 The Court concludes that the ALJ's finding that the objective medical evidence is  
13 inconsistent with the degree of limitation alleged by plaintiff is based on substantial  
14 evidence in the record as a whole. Much of the objective medical evidence in support of  
15 this finding by the ALJ has been discussed already by the Court, *see supra*, sections 1 and  
16 2, such as the discussion regarding plaintiff's alleged back pain, and the objective  
17 findings on mental status examination with Dr. Covell that plaintiff was "only 'mildly  
18 distractible,' completed serial sevens and spelled a simple word forward and backward,"  
19 that plaintiff "had normal yet underproductive speech; that he had only 'some difficulty'  
20 expressing thoughts and feelings, that his thought processes were logical and oriented,  
21 with no bizarre or delusional content, that he occasionally laughed and smiled at  
22 appropriate times and that he had no significant difficulties in nonverbal communication  
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1 and social reciprocity (internal citation to Exhibit 7F/5-6)” (Tr. 30). The ALJ also noted  
2 that plaintiff testified that he stated that he speaks with others, games with others, and  
3 play sports and that at his hearing, he “testified that he is currently on no medication” (Tr.  
4 24; *see also* Tr. 241 (indicating no medications)).

5 In addition to rely on inconsistency with the medical evidence, the ALJ also relied  
6 on his observations during the hearing testimony with plaintiff as follows:

7 [Plaintiff] testified that his memory is difficult when he is asked  
8 questions. In response to many questions he responded slowly and with  
9 vague statements such as “I can’t remember,” “don’t know,” “I  
10 suppose,” “sort of,” and “not sure.” During his testimony, he smiled and  
11 quietly laughed at some of his answers. He said he dropped out of high  
12 school in the 10th grade because he did not see much of a point in going.  
13 When he dropped out, he spent his days watching T.V., playing video  
14 games, reading, and hanging out with family. He testified that he helped  
15 his grandmother in her craft business for “a while.” He said he filled  
16 bottles with glitter, but he could not remember when this occurred or for  
17 how long he did this. When asked why he could not work, the claimant  
18 testified that he has a lack of caring or seeing the point. He also stated he  
19 does not entirely get along with others as most people do. He also said  
20 his back pain was a “bit” of a problem. Claimant said he never received  
21 medications for his back pain because it was not necessary that his back  
22 function, and they were waiting to see what happened with his back.  
23 When asked if he was exercising he stated “not a lot”. He said he tried to  
24 get into the habit, but stop caring and then stop exercising (sic). The  
claimant was much more forthcoming with his answers when his  
representative asked leading questions. He quickly answered “yes” to  
questions such as whether it was a number of years ago when he played  
Diablo, whether he had difficulty staying on task, whether his tendencies  
had gotten worse over the last couple years, whether he had trouble  
focusing when people talk to him, and whether his reading has declined  
over past couple of years. When his representative asked if he had  
managed to stick with videogames very long he quickly responded “no.”

(Tr. 29).

1 The Court concludes that the ALJ's finding that "the claimant's manner of  
2 testifying at the hearing undermined his credibility" is supported by substantial evidence  
3 in the record as a whole (*see* Tr. 29). The ALJ found that in the testimony quoted herein,  
4 plaintiff was "vague and evasive, and stated he could not remember when I asked him  
5 open-ended questions; [h]owever, when he was asked leading questions by his  
6 representative he had no problem with answering" (*id.*). This finding and the ALJ's  
7 implication is supported by substantial evidence in the record.

8  
9 The ALJ also failed to accept plaintiff's potential explanation for this discrepancy,  
10 noting that although plaintiff alleged memory problems, "this is inconsistent with the  
11 medical evidence, which does not support the level of memory problems that he claims"  
12 (*id.*). The ALJ provided examples: "when Dr. Covell examined the claimant, he had only  
13 minor difficulty recalling details, dates and time frames of events in his personal history,  
14 but his remote memory was grossly intact and his immediate and delayed memory  
15 functioning were average; He was able to recall three items in a list immediately and after  
16 brief period of distraction and delay (*id. (citing* Tr. 359)); the most recent medical  
17 evidence shows that he has only mild impairment in memory" (*id. (citing* Tr. 477-78)).  
18 These examples provided by the ALJ are supported by substantial evidence in the record  
19 as a whole, because the ALJ's discussion accurately reflects the medical record (*see, e.g.,*  
20 Tr. 359, 477-78). The Court also notes that other evidence from the medical evidence  
21 supports the ALJ's finding (*see, e.g.,* Tr. 249 (no impairment in ability to remember  
22 simple instructions); Tr. 254 (immediate memory 3/3, after five minute delay 2/3); Tr.  
23  
24

1 366 (remote memory: “intact”); Tr. 399 (“His scores in working memory are actually in  
2 the high average range”)).

3 The Court concludes that the ALJ’s finding that plaintiff’s testimony unreasonably  
4 varied between direct and cross examination is based on substantial evidence in the  
5 record as a whole. The Court also concludes that this reasoning provides some support  
6 for the ALJs credibility determination.

7 Based on the record as a whole and for the reasons stated the Court concludes that  
8 the ALJ did not commit harmful error in his evaluation of plaintiff’s credibility, and that  
9 his findings are based on substantial evidence in the record as a whole.  
10

11 **(4) Whether or not the ALJ failed to provide “germane” reasons for  
12 rejecting lay testimony.**

13 In this matter, plaintiff’s mother offered a lay opinion. Plaintiff complains that the  
14 ALJ failed to provide germane reasons for rejecting her opinion; however, the Court  
15 concludes that the ALJ’s analysis was proper.

16 Pursuant to the relevant federal regulations, in addition to “acceptable medical  
17 sources,” that is, sources “who can provide evidence to establish an impairment,” 20  
18 C.F.R. § 404.1513 (a), there are “other sources,” such as friends and family members,  
19 who are defined as “other non-medical sources” and “other sources” such as nurse  
20 practitioners and chiropractors, who are considered other medical sources, *see* 20 C.F.R.  
21 § 404.1513 (d). *See also Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1223-24 (9th Cir.  
22 2010) (*citing* 20 C.F.R. § 404.1513(a), (d)); Social Security Ruling “SSR” 06-3p, 2006  
23 SSR LEXIS 5 at \*4-\*5, 2006 WL 2329939. An ALJ may disregard opinion evidence  
24



1 provided by both types of “other sources,” characterized by the Ninth Circuit as lay  
2 testimony, “if the ALJ ‘gives reasons germane to each witness for doing so.’” *Turner*,  
3 *supra*, 613 F.3d at 1224 (quoting *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)); *see*  
4 *also Van Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996).

5 Here, the ALJ provided the following discussion regarding the lay opinion of  
6 plaintiff’s mother:

7 I also find that the testimony of Rachel DeVore, the claimant’s mother,  
8 is inconsistent with and not supported by the medical evidence and  
9 bolsters the impression that the claimant’s lack of functioning at home is  
10 not attributable to clinical causes, but is more related to his knowledge  
11 that his mother would continue to support him. For example, Ms.  
12 DeVore testified that the claimant drifted off during conversation and  
13 would have to ask her to repeat what she said. She testified that the  
14 claimant did not have the focus to read anymore. However, Dr. Covell  
15 found that the claimant was only mildly distractible. The claimant was  
16 able to complete serial sevens and spell a simple word forward and  
17 backward. He was able to follow simple written and oral commands,  
18 repeat a phrase, name objects and produce a simple written sentence. He  
19 was able to copy a figure accurately (internal citation to Exhibit 7F/6).  
20 The most recent medical records show the claimant had only a moderate  
21 impairment concentration as demonstrated by his latent responses  
22 (internal citation to Exhibit 20 F/23-24). Thus, her testimony reflects the  
23 claimant’s chosen behavior, rather than reflecting limitations caused by  
24 medically determinable impairments.

(Tr. 29).

19 The ALJ pointed out a specific inconsistency between the testimony of plaintiff’s  
20 mother and the opinion of examining psychological doctor, Dr. Covell (*see id.*). This  
21 finding alone provides a germane reason for the ALJ’s failure to credit fully the lay  
22 opinion of plaintiff’s mother. The Court finds no harmful error.

23 //

24

1       (5)     **Whether or not the ALJ failed to meet his burden of showing that**  
2             **plaintiff was disabled at step five of the sequential evaluation process.**

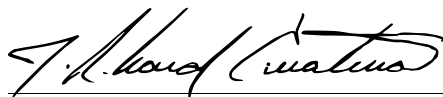
3             Plaintiff has not raised any additional arguments in support of his final argument  
4     that the step five determination was in error.

5                             CONCLUSION

6             Based on the stated reasons and the relevant record, the Court **ORDERS** that this  
7     matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

8             **JUDGMENT** should be for defendant and the case should be closed.

9             Dated this 16<sup>th</sup> day of June, 2014.

10   

11   J. Richard Creatura  
12   United States Magistrate Judge